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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-8

13 **LYDIA CAMACHO DUGAN**
10341 N. Portal Avenue
14 **Cupertino, CA 95014**
Registered Nurse License No. 405040

ACCUSATION

15 Respondent.

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17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about August 31, 1986, the Board of Registered Nursing issued Registered
22 Nurse License Number 405040 to Lydia Camacho Dugan ("Respondent"). The Registered Nurse
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on May 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1
2 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
3 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
4 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
5 Nursing Practice Act.

6 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
7 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
8 licensee or to render a decision imposing discipline on the license.

9 RELEVANT STATUTES AND REGULATIONS

10 6. Section 2761 of the Code states:

11 "The board may take disciplinary action against a certified or licensed nurse or deny an
12 application for a certificate or license for any of the following:

13 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

14 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
15 functions.

16 ...

17 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
18 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
19 Act] or regulations adopted pursuant to it.

20 ...

21 7. Section 2762 of the Code states:

22 "In addition to other acts constituting unprofessional conduct within the meaning of this
23 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
24 chapter to do any of the following:

25 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
26 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
27 administer to another, any controlled substance as defined in Division 10 (commencing with
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1 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
2 defined in Section 4022.

3
4 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
5 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
6 section."

7 8. California Code of Regulations, title 16, section 1442, states:

8 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
9 the standard of care which, under similar circumstances, would have ordinarily been exercised by
10 a competent registered nurse. Such an extreme departure means the repeated failure to provide
11 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
12 situation which the nurse knew, or should have known, could have jeopardized the client's health
13 or life."

14 9. California Code of Regulations, title 16, section 1443, states:

15 "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the
16 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
17 exercised by a competent registered nurse as described in Section 1443.5."

18 10. Code section 4060 states, in pertinent part:

19 No person shall possess any controlled substance, except that furnished to a person
20 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
21 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order
22 issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner
23 pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a
naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either
subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph
(5) of, subdivision (a) of Section 4052 . . .

24 11. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
25 "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to
26 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
27 misrepresentation, or subterfuge . . ."

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1 A drug audit at Kaiser-OPPC in 2006, revealed that Respondent had withdrawn 17 vials of
2 controlled substances that she reported as being "wasted" versus returned to the Pyxis.

3 FIRST CAUSE FOR DISCIPLINE

4 (Gross Negligence/Incompetence – Unintelligible Medication Entries)

5 19. Respondent is subject to disciplinary action under Code section 2761(a) in that while
6 on duty as a registered nurse at Kaiser-OPPC, she made false, grossly incorrect, inconsistent,
7 and/or or unintelligible entries in hospital and patient records pertaining to controlled substances,
8 in violation of Code section 2762(e) as follows:

9 Patient 1:

10 a. On May 4, 2006, Respondent withdrew two vials of Fentanyl (2ml/100mcg) for
11 Patient 1. In the Pyxis, Respondent noted returning one vial of Fentanyl, wasting 50 mcg of
12 Fentanyl and administering 50 mcg of Fentanyl to Patient 1. However, on the Procedural
13 Sedation Record, Respondent noted that she had administered 75 mcg of Fentanyl to Patient 1.,
14 a 25 mcg discrepancy with what she noted in Pyxis.

15 Patient 2:

16 b. On May 19, 2006, Respondent removed two vials of Fentanyl (2ml/100mcg) and
17 three vials of Versed under Patient 2's name. Patient 2 was admitted to Kaiser's Outpatient
18 Retinal Surgery Center, not Kaiser-OPPC. Respondent failed to document the wasting and/or
19 account for the removal of the Fentanyl and Versed for any patient who had been admitted to
20 Kaiser-OPCC on May 19, 2006.

21 Patient 3:

22 c. On May 19, 2006, Respondent recorded on the Procedural Sedation Record that she
23 administered the following medications to Patient 3: (1) 100 mcg of Fentanyl; (2) Versed (2
24 mg); and (3) Benadryl. There were no corresponding entries in Pyxis indicating that Respondent
25 had withdrawn these medications for Patient 3.

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3. Taking such other and further action as deemed necessary and proper.

DATED: 7/1/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2010400236